

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|   |   |                      |
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| In the Matter of                            | ) |                      |
|   | ) |                      |
| Review of the Section 251 Unbundling        | ) | CC Docket No. 01-338 |
| Obligations of Incumbent Local Exchange     | ) |                      |
| Carriers                                    | ) |                      |
|   | ) |                      |
| Implementation of the Local Competition     | ) | CC Docket No. 96-98  |
| Provisions of the Telecommunications Act of | ) |                      |
| 1996  | ) |                      |
|   | ) |                      |
| Deployment of Wireline Services Offering    | ) | CC Docket No. 98-147 |
| Advanced Telecommunications Capability      | ) |                      |

**Reply Comments of the  
Regulatory Commission of Alaska**

The Regulatory Commission of Alaska (RCA) welcomes the opportunity to provide reply comments in response to changes being considered in the Notice of Proposed Rulemaking (NPRM) released December 20, 2001 [FCC 01-361 67 Federal Register 1947 (January 15, 2002)] regarding the provision of unbundled network elements (UNEs) by incumbent local exchange carriers (ILECs).

The RCA strongly supports the FCC's intent to "implement the provisions of the 1996 Act in order to achieve its goals of bringing the benefits of competition and expanding broadband availability to consumers." [P. 4]

The RCA strongly recommends that the FCC convene a joint

conference with the states before revising its list of UNEs. Following consultation with the joint conference, the FCC should establish a default list of UNEs and guidelines for individual states to consider when making changes to the UNE default list. States should have flexibility to add or delete from the UNE list, taking into consideration the guidelines developed by the FCC following input from the states (i.e. joint conference). The FCC should give states additional pricing flexibility when arbitrating UNE rates. The FCC should not adopt or impose administratively burdensome rules for states to follow when states implement unbundling or consider changes to the FCC's UNE default list.

## **Comments**

### FCC should establish Joint Conference.

In the NPRM, the FCC seeks comment on whether to convene a Federal-State Joint Conference on UNEs under section 410(b) of the Act to inform and coordinate the FCC's review. Along with NARUC, many states commissions, and other commentors, we strongly support the establishment of a Federal-State Joint Conference. States have played a crucial role in implementing the Telecommunications Act of 1996, most importantly as arbitrators of interconnection agreements. States are not only familiar with local market conditions but also with the reasons why local competition is either working or not working in our own states. States will be able to provide indispensable information and insight, particularly as the FCC considers

adopting a more granular analysis of the factors affecting unbundling requirements.

FCC should establish default list and guidelines after consultation with states.

We concur with the many commentators that encourage the FCC to not establish an inflexible list of UNEs but rather a default list (or lists) that can be modified on a state-by-state or case-by-case basis, as necessary. The FCC, through its NPRM, has done the initial work of identifying the factors to be considered in a more granular analysis of UNE rules (i.e., services of the requesting carrier, geography, capacity requirements, characteristics of the requesting carrier, type of customers being served, temporal boundaries on UNE availability, etc.). While the FCC may find, through consultation with the states, that there are many common factors in the experiences of the various ILEC and CLEC participants, we believe it is highly unlikely that the FCC will conclude that a one-size-fits-all UNE list is appropriate. For the same reason, we believe that it is unwise for the FCC to try to devise a precise list of rules that dictate what changes the states can or cannot make to the default list. We do however encourage the FCC to help establish guidelines based upon its consultation with the states to assist the states when making case-or state-specific changes to any eventual default list.

States should have flexibility to add or delete from default list of UNEs.

We believe it is both appropriate and necessary for states to have authority to delete elements from the FCC's eventual UNE list, and also to add elements, as provided for under section 251(d)(3).<sup>1</sup> The FCC may conclude that certain unbundled network elements are ubiquitously available from sources other than the incumbent LECs and need not generally be provided by ILECs. However, the FCC should also recognize that there will always be unanticipated exceptions to the rule, such as those, for example, resulting from changes in ILEC network architecture or technology. Even if the FCC adopts rules that provide for multiple default lists based upon various granularity considerations, there is simply no way that the FCC can anticipate every potential circumstance. As a result, states need to have the flexibility to add to, as well as delete from, the FCC default list(s). Indeed, we concur with NARUC and many comments that Congress has granted states this authority under 251(d)(3).

The FCC should give states additional pricing flexibility when setting UNE rates.

The FCC has focused on eliminating the ILEC's UNE provisioning

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<sup>1</sup> PRESERVATION OF STATE ACCESS REGULATIONS- In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--(A) establishes access and interconnection obligations of local exchange carriers; --(B) is consistent with the requirements of this section; and --(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

requirements as a method of encouraging greater facilities-based competition. However, elimination of UNEs is an all-or-nothing proposition. An alternative, less-drastic method would be to grant states increased flexibility in arbitrating interconnection rates. For example, a state commission could add a premium to the TELRIC switching rate during renegotiation of an interconnection agreement if it determined that the CLEC was not making sufficient progress toward installing its own switching equipment or if it wanted to encourage alternative switching providers to enter the local market. Price setting flexibility could be based upon non-forward looking cost methods such as embedded costs or market rates, if the FCC has authority under the Telecommunications Act to forbear from the pricing standard in section 252(d)(1). We do not necessarily advocate this approach for initial contracts but believe it may make sense for contract renewals. Ultimately, we believe that this would permit a transition to facilities-based competition that is more gradual and reasonable, than the all-or-nothing elimination of specific UNEs.

FCC rules should not impose administrative burdens on states.

Finally, while we encourage the FCC to adopt rules that give states maximum flexibility to make changes to a FCC default list, we would strongly oppose any FCC rules that mandate procedures or place unreasonable administrative burdens on state commissions. The FCC is well aware of the state role in arbitrating interconnection disputes. Arbitration is already an extremely resource intensive task due to statutory time constraints, use of

relatively new pricing standards, court challenges, and other factors. To place new mandatory obligations on states at the outset of the interconnection process that would require adjudication of complex and potentially controversial UNE standards could prove to be extremely burdensome to small commissions already significantly impacted by the obligations of sections 251, 252 and 254. Modification of default lists (through state rulemaking or case-by-case adjudication) should be a state option, not an necessary obligation.

#### Conclusion

We encourage FCC to consult with the states through a joint conference to establish default UNEs and guidelines to assist states in making additions to, and deletions from, the default list of UNEs. We also encourage the FCC to be cognizant of potential administrative costs on small states and not impose burdensome mandates.

RESPECTFULLY SUBMITTED this 7th day of June, 2002.

/s/  
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